

CAUSE NO. D-1-GN-09-004062

TJFA, L.P.,

Plaintiff,

v.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, Defendant.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

353<sup>rd</sup> JUDICIAL DISTRICT

**PLEA TO THE JURISDICTION, OR, IN THE ALTERNATIVE, MOTION TO DISMISS, AND ORIGINAL ANSWER OF DEFENDANT TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

TO THE HONORABLE JUDGE OF SAID COURT:

The Texas Commission on Environmental Quality (“Commission”), Defendant, files this plea to the jurisdiction, or, in the alternative, motion to dismiss. The Commission also files a general denial. In support this filing, the Commission shows as follows:

**PLEA TO THE JURISDICTION**

1. Plaintiff filed this appeal complaining of a Commission final order. The decision approves an amendment to Permit No. MSW-1447A issued to BFI Waste Systems of North America, LLC (“BFI”) pursuant to the provisions of the Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE, Chapter 361.

2. Texas Health & Safety Code Ann. § 361.321 authorizes this appeal. Texas Health & Safety Code Ann. § 361.321(c) provides, in pertinent part, as follows: [T]he petition must be filed not later than the 30<sup>th</sup> day after the date of the ruling, order, decision, or other act of the governmental entity whose action is appealed. **Service of citation must be**

**accomplished not later than the 30<sup>th</sup> day after the date on which the petition is filed.”**

(Emphasis added.)

3. Plaintiff filed its petition seeking review of the Commission decision on December 1, 2009. Plaintiff did not serve the Commission with citation until January 11, 2010. Plaintiff was required to serve the Commission with citation by no later than December 31, 2009 – within thirty days after the date on which the petition was filed. Plaintiff failed, therefore, to comply with the statutorily prescribed method for invoking the jurisdiction of the courts. The enabling statute (the Solid Waste Disposal Act) specifies judicial procedures and requirements, and compliance with the requirements of the statute is needed for a court to maintain jurisdiction in an appeal of an agency order. The Court, therefore, lacks subject matter jurisdiction over this appeal, and it should be dismissed.

### **MOTION TO DISMISS**

In the alternative, the Commission incorporates the averments in its plea to the jurisdiction and reasserts them as a motion to dismiss and ask the Court to dismiss the ~~claims.~~

### **ORIGINAL ANSWER**

Defendant denies each and every allegation in Plaintiff's Original Petition and demands strict proof thereof. Defendant reserves the right to amend this answer as permitted under the Texas Rules of Civil Procedure.

**PRAYER**

For these reasons, the Commission requests that this Court:

- 1) Grant the Plea to the Jurisdiction or, in the alternative, the Motion to Dismiss and dismiss this cause in its entirety, or
- 2) Order that Plaintiff take nothing by this suit and that the Commission recover its costs. The Commission further prays for such other relief to which it may be entitled.

Respectfully submitted,


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CERTIFICATE OF SERVICE

On January 29, 2010, I served the above and foregoing on each person on the list below, by the method shown:

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